

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 1872 of 1999

Between:

Y.V.Raghavulu, S/o Thirapaiah,
R/o Ind Well Colony, KSP Road, Paloncha (New),
Khammam Dist.

..... PETITIONER

AND

1 A.P.S.E.B. Rep. by its Member Secretary, Vidyuthsoudha,
Hyderabad.

2 The Chief Engineer, Operation & Maintenance
K.T.P.S. V stage, Paloncha, Khammam Dist, A.P.507115.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ more particularly one in the nature of mandamus declaring the proceedings Lr.No.CE/E/0&M/KTPS V-Stage/F2/D.No.3974/98 dt.3-12-1998 as illegal, arbitrary, discriminatory and violative of Art.14 and 16 of the Constitution of India and to consequently direct the respondents to absorb the petitioner as man Mazdoor/Helper as any other suitable post in the respondent APSEB Board according to his seniority with all consequential benefits

Counsel for the Petitioner: MR.UNNAM.MURALIDHAR RAO

Counsel for the Respondent: SMT.E. URMILA

The Court made the following ORDER:

This writ petition is filed seeking a *Writ of Mandamus* declaring the proceedings of the second respondent dated 03.12.1998, as arbitrary, illegal and violation of Articles 14 and 16 of the Constitution of India and for a consequential direction to the respondents to absorb the petitioner as man Mazdoor/Helper or in any other suitable post in the respondent-A.P.S.E.B (for short 'the Board') as per his seniority.

The case of the petitioner is that on 01-06-1994, he joined as a Semi-skilled worker in the K.T.P.S. Stage-V under a recognized contractor of the Board i.e., M/s. Indwell Constructions Private Limited and has been working as such. It is his further case that the Board had issued B.P.M.S.No.36, dated 18.05.1997 for absorption of Ex-casual Labour, Village Electricity Workers and contract labour. Insofar as the Contract Labour is concerned, it was stated that the contract labour other than those engaged in 33 abolished categories in generating stations shall be considered for selection and appointment against 50% existing vacancies. Further, as per clause 5(c), seniority of the persons has to be reckoned on the basis of total period of service rendered. Subsequently, B.P.Ms.No.272 (P&G Per) dated 31.12.1997 was issued prescribing the eligibility criteria for Ex-casual labour to be considered under B.P.Ms.No.36 Clause 5(i)(c). As per the said clause, the contract labour engaged by a contractor having a valid licence issued by a competent authority under the Contract Labour (Regulations & Abolition) Act, 1970 and regulations made therein and working as on 18.05.1997, are only eligible for consideration. Further a clarification was also issued keeping this in view. As per B.P.Ms.No.36 and the clarifications issued thereafter, the petitioner is fully qualified and eligible for being absorbed into service of the Board. However, his case was not considered and

therefore he was constrained to approach this Court and file Writ Petition-W.P.No.16779 of 1998. The said writ petition was disposed of on 03.07.1998 directing the respondents to consider the case of the petitioner for absorption. Accordingly, the respondents called the petitioner for interview on 08.07.1998 and rejected his case stating that he was engaged in construction project and attending to construction work/office work of K.T.P.S. V-Stage, and therefore, his case could not be considered in pursuance of B.P.Ms.No.272 dated 31.12.1996. Further, it was asserted that according to G.O.Ms.No.41, dated 23.09.1996, the Government had prohibited employment of contract labour against 33 abolished categories of jobs mentioned therein and also contract labour. According to the petitioner, the job in which he was engaged was one among the 33 abolished categories. Therefore, non-consideration of his case for absorption as per B.P.Ms.No.36 is arbitrary and illegal. Hence, the present writ petition.

A detailed counter-affidavit has been filed on behalf of the respondents disputing and denying the allegations made by the petitioner. Further, it was ascertained that as per the directions issued by this Court in W.P.No.16779 of 1998 dated 02.07.1998, the petitioner was interviewed by a duly constituted Selection Committee on 08.07.1998 and after careful consideration, orders were issued on 31.12.1998 rejecting the case of the petitioner for absorption into the services of the Board. The petitioner was not eligible for such absorption, as he was not coming under the purview of the orders issued in G.O.Ms.No.41, dated 23.09.1996 and orders issued thereon *vide* B.P.Ms.No.272, dated 31.12.1997. In the instant case, the petitioner was not on rolls of the respondent Board as on 23.09.1996 since he was neither engaged nor employed by the respondent. He was engaged by a firm viz., M/s. Indwell Construction (P) Limited, till September, 1998 and after completion of works, he left and presently, he is not working under the firm for V-Stage works. Therefore, the petitioner is not entitled for absorption as claimed for.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the material available on record.

Admittedly, the case of the petitioner was rejected on the ground that he had worked with a Contractor engaged on the construction work/office work at K.T.P.S.V stage. Since the contract labour system on construction side was not one of the abolished categories among the 33 categories abolished under G.O.Ms.No.41, dated 23.09.1996, it was difficult for the respondents to consider the case of the petitioner.

It is not the case of the petitioner that he was not working with the Contractor on the construction side. The Contract Labour has defined at Clause 5(c) of B.P.Ms.No.36 and the nature of the work attended to by the petitioner is altogether different. The Clause 5(c) of B.P.Ms.No.36 contemplates the Contract Labour engaged by a Contractor having a valid licence and that the category in which, the Contract Labour were engaged should have been one of the abolished categories among the 33 categories as per G.O.Ms.No.41 dated 23.09.1996. It is not the case of the petitioner that the works for which the petitioner was engaged come under the contract labour system, which is abolished under G.O.Ms.No.41.

Therefore, I am of the opinion that the authorities have not committed any irregularity or infirmity in rejecting the case of the petitioner through the impugned order dated 03.04.1998. However, this will not preclude the petitioner in approaching the respondents for consideration of his case for absorption if, similar type of casual labourers as that of the petitioner is evolved by the Board.

With the above directions, the writ petition is dismissed. No order as to costs.

C.V. Ramulu, J

Date: 01.07.2005

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To

- 1 The Member Secretary, A.P.S.E.B., Vidyuthsoudha, Hyderabad.
- 2 The Chief Engineer, Operation & Maintenance
K.T.P.S. V stage, Paloncha, Khammam Dist, A.P.507115.
- 3 Two CD Copies